

SENATE BILL No. 1

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4; IC 5-13-9-3.4; IC 6-1.1; IC 6-2.5-5-39; IC 6-3-2-13; IC 6-3.1; IC 8-10.

Synopsis: Economic development. Authorizes the use of state tax revenue, exceeding a base allocation amount, to be used for payments of bonds issued, loans entered into, or leases entered into for an industrial development project in a distressed area. Provides that the same definition of distressed area be used for programs involving industrial development projects and the growth investment program fund. Exempts purchases of equipment for research and development in biotechnology, advanced manufacturing, information technology, or 21st century logistics from gross retail and use taxes. Increases the research expense credit to 20% of research expenses and makes the credit permanent. Provides a state tax credit to a small business equal to: (1) 30% of the depreciable cost of certain property placed in service in a trade or business conducted by the small business when the small business places property in service in Indiana; or (2) 30% of the employee expenses incurred for new employees when the small business adds at least five jobs to the Indiana workforce. Establishes a 15% technology commercialization tax credit against state tax liability for expenses incurred to commercialize technology developed in Indiana. Expands the authority of the Indiana port commission to finance and operate projects other than port projects on Lake Michigan, the Ohio River, or the Wabash River.

Effective: July 1, 2003.

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January 9, 2003, read first time and referred to Committee on Economic Development and Technology.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 1

A BILL FOR AN ACT to amend the Indiana Code concerning economic development and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-10.9-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The definitions in
3 this chapter apply throughout this chapter, ~~and~~ IC 4-4-11, **and**
4 **IC 4-4-31.**

5 SECTION 2. IC 4-4-10.9-5.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2003]: **Sec. 5.5. "Covered taxes" refers to**
8 **any of the following:**

9 (1) **The state gross retail tax imposed under IC 6-2.5-2-1 or**
10 **the use tax imposed under IC 6-2.5-3-2.**

11 (2) **An adjusted gross income tax imposed under IC 6-3-2-1.**

12 SECTION 3. IC 4-4-10.9-6.1 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2003]: **Sec. 6.1. "Distressed area" means a**
15 **county in which:**

16 (1) **the average annualized unemployment rate in each of the**
17 **five (5) calendar years immediately preceding the current**



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calendar year exceeded the statewide average annualized employment rate for each of the same calendar years; or

(2) the average annualized unemployment rate in the immediately preceding calendar year was at least double the statewide average annualized employment rate for the same period;

as determined by the department of workforce development and published in the report required by IC 4-4-31-1.

SECTION 4. IC 4-4-20-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) On July 1 of each year the department of commerce shall designate counties that were in economic stress in the preceding year. The determination under this section shall be based on:

- (1) the unemployment rate;
- (2) the employment growth rate;
- (3) the percentage decline in population; and
- (4) the percentage of families and individuals below the poverty level;

in each county in the preceding year. The department of commerce shall designate thirty (30) counties under this section from the list distributed to the department under IC 4-4-31-1 as having been in economic stress.

(b) Before August 1 of each year, the department of commerce shall:

- (1) notify the county legislative body if the county is a designated county under this section; and
- (2) prepare a list of the designated counties.

(c) A designation under this section expires June 30 of the year after the year in which the designation is made.

SECTION 5. IC 4-4-31 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 31. Funding of Industrial Development Projects in Distressed Counties

Sec. 1. After June 30 and before July 15 of each year, the department of workforce development shall provide the authority with a list of the counties that qualify as distressed areas as of the date of the report. A copy of the list shall also be distributed to the department of commerce for use under IC 4-4-20.

Sec. 2. The authority may adopt a resolution designating an industrial development project as a tax allocation project if the industrial development project is located in an area that is

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designated in the latest report issued under section 1 of this chapter as a distressed area. The authority shall designate in the resolution the boundaries of the tax allocation project area. The resolution designating a tax allocation project must provide for:

- (1) allocation of covered taxes attributable to a taxable event or covered taxes earned in the tax allocation project area to an industrial development project area fund established for the industrial development project;
- (2) use of money in the industrial development project area fund solely for payments related to bonds, loans, or leases issued under this article to pay for the costs of the project; and
- (3) termination of the industrial development project area fund upon payment of all obligations described in subdivision (2).

The authority shall incorporate the resolution adopted under this section into the financing agreement entered into between the developer of the industrial development project and the authority.

Sec. 3. A resolution adopted under section 2 of this chapter authorizes the allocation of the following covered taxes (in excess of the base allocation amount) to the industrial development project area fund for an industrial development project:

- (1) Covered taxes incurred by a developer as a consequence of the development of the industrial development project, including gross retail taxes otherwise collectible by a retail merchant on goods or services provided to the developer for the industrial development project.
- (2) Covered taxes that:
 - (A) are incurred by an individual or entity that leases, controls, uses, or operates in; and
 - (B) are attributable to a taxable event related to or earned through lease, control, use, or operations in; facilities developed through an industrial development project, including gross retail taxes otherwise collectible by a retail merchant on goods or services provided to the individual or entity.
- (3) Covered taxes that:
 - (A) are incurred by an individual or entity that is a partner, shareholder, or member of an entity that leases, controls, uses, or operates in; and
 - (B) are attributable to a taxable event related to or earned through lease, control, use, or operations in;



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1 facilities developed through an industrial development
2 project.

3 (4) Four percent (4%) of covered taxes on wages or other
4 compensation earned by persons employed or providing
5 services at facilities financed through an industrial
6 development project, including services related to the
7 construction, reconstruction, improvement, or repair of the
8 facilities.

9 Sec. 4. The authority shall provide the department of state
10 revenue and the auditor of state with a copy of any resolution
11 adopted under section 2 of this chapter and the related financing
12 agreement. Upon receipt of a copy of the resolution and the related
13 financing agreement:

14 (1) the auditor of state shall establish an industrial
15 development project area fund for the industrial development
16 project;

17 (2) the department of state revenue shall compute the base
18 allocation amount for the industrial development project
19 area;

20 (3) the department of state revenue shall annually deposit the
21 covered taxes subject to the resolution (to the extent that the
22 amount exceeds the base allocation amount) in the industrial
23 development project area fund for the industrial development
24 project; and

25 (4) the auditor of state shall make payments from the
26 industrial development project area fund in accordance with
27 the resolution and the financing agreement for the industrial
28 development project.

29 Sec. 5. The department of state revenue shall estimate the base
30 allocation amount for the data available to the department and any
31 other data supplied by the authority. The base allocation amount
32 is equal to the amount of covered taxes deposited from taxable
33 events occurring in the tax allocation project area in the calendar
34 year immediately preceding the calendar year in which the
35 resolution is adopted under section 2 of this chapter.

36 Sec. 6. An industrial development project area fund established
37 under section 4 of this chapter shall be treated as a trust fund.
38 Money in an industrial development project area fund is annually
39 appropriated for purposes of the industrial development project
40 for which it was created and may be used only for the purposes
41 specified in the resolution and financing agreement for the
42 industrial development project. Money in the industrial



development project area fund at the end of a state fiscal year does not revert to the state general fund. However, unencumbered money remaining in an industrial development project area fund upon payment of all obligations for which the fund was created revert to the state general fund.

Sec. 7. The department of state revenue may adopt rules under IC 4-22-2 and prescribe forms to carry out its responsibilities under this chapter, including the establishment of requirements concerning the filing of informational returns necessary to identify tax receipts that are to be deposited in an industrial development project area fund.

SECTION 6. IC 5-13-9-3.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3.4. Each officer designated in section 1 of this chapter may invest or reinvest any funds that are held by the officer and available for investment in obligations issued, assumed, or guaranteed by the Indiana port commission.**

SECTION 7. IC 6-1.1-10-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 38. This chapter does not contain all of the property tax exemption provisions. The property taxation exemption provisions include but are not limited to the following sections:

IC 4-20.5-14-3	IC 20-14-7-3
IC 4-20.5-19	IC 20-14-9-15
IC 5-1-4-26	IC 20-14-10-14
IC 6-1.1-10-5	IC 21-5-11-14
IC 8-10-1-27 IC 8-10-0.5-17	IC 21-5-12-10
IC 8-23-7-31	IC 23-7-7-3
IC 8-15-2-12	IC 23-14-70-23
IC 8-21-9-31	IC 36-1-10-18
IC 10-7-1-20	IC 36-7-14-37
IC 10-7-2-32	IC 36-7-15.1-25
IC 10-7-5-12	IC 36-7-18-25
IC 10-7-6-21	IC 36-9-4-52
IC 10-7-12-9	IC 36-9-11-10
IC 14-33-20-27	IC 36-9-11.1-11
IC 15-1.5-6-4	IC 36-9-13-36
IC 16-22-6-34	IC 36-9-13-37
IC 20-12-6-11	IC 36-9-30-31
IC 20-12-7-5	IC 36-10-8-18
IC 20-12-8-5	IC 36-10-9-18

SECTION 8. IC 6-1.1-40-1 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter, "commission" refers to the Indiana port commission established by ~~IC 8-10-1~~ **IC 8-10-0.5-1**.

SECTION 9. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 39. (a) As used in this section, "product" includes a pilot model, a process, a formula, an invention, a technique, a patent, or a similar property. The term includes property to be used in a taxpayer's trade or business and property to be held for sale, lease, or license, regardless of whether the property is ultimately placed in service, sold, leased, or licensed.

(b) As used in this section, "research and development" means laboratory or experimental activity to develop or improve a product or to discover information that would eliminate uncertainty concerning the development or improvement of a product.

(c) The term "research and development" does not include any of the following:

- (1) The ordinary testing or inspection of materials or products for quality control. The quality control testing to which this subdivision applies includes testing or inspection to determine whether particular units of materials or products conform to specified parameters. Quality control testing does not include testing to determine if the design of a product is appropriate.
- (2) Efficiency surveys.
- (3) Management studies.
- (4) Consumer surveys.
- (5) Advertising or promotions.
- (6) The acquisition of another's patent, model, production, process, or other product.
- (7) Research in connection with literary, historical, or similar projects.
- (8) Activities to ascertain the existence, location, extent, or quality of any deposit of oil, gas, ore, or other mineral.
- (9) Assembly, construction, or installation of property that is placed in service or held for sale, lease, or license.

(d) As used in this section, "equipment" means tangible personal property that consists of:

- (1) laboratory equipment;
- (2) research and development equipment;
- (3) computers and computer software;
- (4) telecommunications equipment; or



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(5) testing equipment.

(e) As used in this section, "uncertainty" means the unavailability to the taxpayer of information necessary to establish the capability or method for developing or improving the product or the appropriate design of the product.

(f) Transactions involving equipment are exempt from the state gross retail tax if the person acquiring it for direct and exclusive use in any of the following areas of research or development:

(1) biotechnology;

(2) information technology;

(3) advanced manufacturing; or

(4) 21st century logistics;

as defined under the rules adopted by the department.

SECTION 10. IC 6-3-2-13, AS AMENDED BY P.L.90-2002, SECTION 288, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) As used in this section, "export income" means the gross receipts from the sale, transfer, or exchange of tangible personal property destined for international markets that is:

(1) manufactured at a plant located within a maritime opportunity district established under IC 6-1.1-40; and

(2) shipped through a port operated by the state.

(b) As used in this section, "export sales ratio" means the quotient of:

(1) the taxpayer's export income; divided by

(2) the taxpayer's gross receipts from the sale, transfer, or exchange of tangible personal property, regardless of its destination.

(c) As used in this section, "taxpayer" means a person or corporation that has export income.

(d) The Indiana port commission established by ~~IC 8-10-1~~ **IC 8-10-0.5-1** shall notify the department when a maritime opportunity district is established under IC 6-1.1-40. The notice must include:

(1) the resolution passed by the commission to establish the district; and

(2) a list of all taxpayers located in the district.

(e) The port commission shall also notify the department of any subsequent changes in the list of taxpayers located in the district.

(f) A taxpayer is entitled to a deduction from the taxpayer's adjusted gross income in an amount equal to the lesser of:

(1) the taxpayer's adjusted gross income; or

(2) the product of the export sales ratio multiplied by the percentage set forth in subsection (g).

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(g) The percentage to be used in determining the amount a taxpayer is entitled to deduct under this section depends upon the number of years that the taxpayer could have taken a deduction under this section. The percentage to be used in subsection (f) is as follows:

YEAR OF DEDUCTION	PERCENTAGE
1st through 4th	100%
5th	80%
6th	60%
7th	40%
8th	20%
9th and thereafter	0%

(h) The department shall determine for each taxpayer claiming a deduction under this section, the taxpayer's export sales ratio for purposes of IC 6-1.1-40. The department shall certify the amount of the ratio to the department of local government finance.

SECTION 11. IC 6-3.1-4-2, AS AMENDED BY P.L.192-2002(ss), SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. A taxpayer who incurs Indiana qualified research expense in a particular taxable year is entitled to a research expense tax credit for the taxable year in the amount of the product of:

(1) ten percent (10%) **for taxable years beginning before January 1, 2003, and twenty percent (20%) for taxable years beginning after December 31, 2003;** multiplied by

(2) the remainder of the taxpayer's Indiana qualified research expenses for the taxable year, minus:

(A) the taxpayer's base period Indiana qualified research expenses, for taxable years beginning before January 1, 1990; or

(B) the taxpayer's base amount, for taxable years beginning after December 31, 1989.

SECTION 12. IC 6-3.1-4-6, AS AMENDED BY P.L.192-2002(ss), SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. ~~Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for Indiana qualified research expense incurred after December 31, 2004.~~ Notwithstanding Section 41 of the Internal Revenue Code, the termination date in Section 41(h) of the Internal Revenue Code does not apply to a taxpayer who is eligible for the credit under this chapter for the taxable year in which the Indiana qualified research expense is incurred.

SECTION 13. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:



Chapter 25. Small Business Expansion Credit

Sec. 1. As used in this chapter, "acquire" means to:

- (1) produce qualified property for use in the taxpayer's trade or business, including depreciable improvements to leased property; or**
- (2) obtain the use of qualified property by purchase.**

Sec. 2. As used in this chapter, "credit" refers to a credit provided by this chapter against state tax liability.

Sec. 3. As used in this chapter, "depreciable cost" means the initial costs incurred by a taxpayer before putting qualified property into service that would be allowable as a depreciation deduction under Section 167 of the Internal Revenue Code or an amortization deduction under Section 197 of the Internal Revenue Code (as applicable), regardless of whether that method of deduction is used by the taxpayer for federal income tax purposes.

Sec. 4. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2); or**
- (2) a:**
 - (A) partnership;**
 - (B) trust;**
 - (C) limited liability company; or**
 - (D) limited liability partnership;****that is not taxed as a corporation under IC 6-3.**

Sec. 5. As used in this chapter, "qualified property" refers to property that section 12 of this chapter indicates is eligible for a credit.

Sec. 6. As used in this chapter, "small business" means a sole proprietorship operated by a person, corporation, or pass through entity that:

- (1) is independently owned and operated;**
- (2) is not dominant in its field of operation; and**
- (3) qualifies as a small business concern under the criteria established in 15 U.S.C. 632 (as effective July 1, 2003) and the definitions and standards established by the administrator of the federal Small Business Administration for a small business concern under 15 U.S.C. 632 (as effective July 1, 2003).**

Sec. 7. As used in this chapter, "state tax liability" means tax liability for adjusted gross income tax under IC 6-3.

Sec. 8. As used in this chapter, "taxpayer" refers to a person or a corporation that has state tax liability in a taxable year or a pass through entity that is eligible for a credit under this chapter.

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1 **Sec. 9.** As used in this chapter, "trade or business" means trade
 2 or business as the term is used in Section 167 of the Internal
 3 Revenue Code.

4 **Sec. 10.** As used in this chapter, "useful life" means the
 5 following:

6 (1) The period over which Section 167, 168, or 197 of the
 7 Internal Revenue Code (as applicable) requires a depreciation
 8 or allocation deduction to be taken for particular qualified
 9 property for federal income tax purposes, if the taxpayer does
 10 not elect to use a useful life determined under subdivision (2).

11 (2) The period that 26 CFR 167(a)-1 would require a
 12 depreciation deduction to be taken if that method were
 13 applicable to the property. However, this subdivision applies
 14 only if the taxpayer elects this method of calculating useful life
 15 in the manner prescribed by the department.

16 **Sec. 11.** A taxpayer that:

17 (1) places qualified property in service in Indiana in a trade
 18 or business;

19 (2) uses the qualified property in Indiana in a trade or
 20 business during the useful life of the qualified property; and

21 (3) qualifies as a small business in the taxable year in which
 22 the taxpayer places the qualified property in service in
 23 Indiana;

24 is eligible for a credit.

25 **Sec. 12.** Subject to sections 13 through 17 of this chapter, the
 26 following property is eligible for a credit under this chapter:

27 (1) Tangible or intangible property for which a deduction for
 28 depreciation is allowable under Section 167 of the Internal
 29 Revenue Code (including software that is not a Section 197
 30 intangible, as determined under Section 197 of the Internal
 31 Revenue Code), regardless of whether the taxpayer takes a
 32 depreciation deduction under Section 167 of the Internal
 33 Revenue Code.

34 (2) Any license, right, or interest in a patent, copyright,
 35 formula, process, design, pattern, knowhow, format, or other
 36 similar item for which an amortization deduction is allowable
 37 under Section 197 of the Internal Revenue Code, regardless of
 38 whether the taxpayer takes an amortization deduction under
 39 Section 197 of the Internal Revenue Code.

40 **Sec. 13.** (a) This section does not apply to a nonexclusive license,
 41 right, or interest in property described in section 12(2) of this
 42 chapter that is acquired directly from the person, corporation, or

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1 pass through entity that controls the right to grant nonexclusive
2 licenses, rights, or interests in the property.

3 (b) To be eligible for a credit, property must not have been used
4 in any other trade or business in Indiana for at least one (1) year
5 before it is acquired by the taxpayer.

6 Sec. 14. Property is not eligible for a credit if:

7 (1) it is acquired from a shareholder, partner, or member of
8 a taxpayer that has a relationship to the taxpayer described
9 in Section 267(b) of the Internal Revenue Code;

10 (2) it is acquired from a member of the family (as determined
11 under Section 267 of the Internal Revenue Code) of a
12 shareholder, partner, or member that directly, indirectly,
13 beneficially, by attribution (as determined under Section 1567
14 of the Internal Revenue Code), or constructively owns at least
15 fifty percent (50%) of the stock or other equity interest in a
16 taxpayer;

17 (3) it is acquired by one (1) component member of a
18 controlled group (as defined in Section 267 of the Internal
19 Revenue Code) that includes the taxpayer or would be a
20 component member if pass through entities were treated as
21 corporations under Section 267 of the Internal Revenue Code;

22 (4) the basis of the property for federal income tax purposes,
23 in the hands of the person acquiring it, is determined:

24 (A) in whole or in part by reference to the federal adjusted
25 basis of the property in the hands of the person,
26 corporation, or pass through entity from whom it was
27 acquired; or

28 (B) under Section 1014(e) of the Internal Revenue Code; or

29 (5) the property is used to substantially replace other
30 property used by:

31 (A) the taxpayer; or

32 (B) another person, corporation, or pass through entity
33 described in subdivision (1), (2), or (3);

34 in a trade or business in Indiana.

35 Sec. 15. To be eligible for a credit, property must be primarily
36 used in Indiana in a trade or business other than an excluded trade
37 or business. For purposes of this section, rental or leasing of
38 property to another person or entity shall be treated as an excluded
39 trade or business.

40 Sec. 16. The following excluded property is not eligible for a
41 credit:

42 (1) Motor vehicles licensed by the bureau of motor vehicles or



by another state or country.

(2) Airplanes.

(3) Other off-premises transportation equipment.

Sec. 17. Property that is used in or as part of any of the following excluded facilities is not eligible for a credit:

(1) Private or commercial golf course.

(2) Country club.

(3) Massage parlor.

(4) Tennis club.

(5) Skating facility (including roller skating, skateboarding, or ice skating).

(6) Racquet sport facility (including any handball or racquetball court).

(7) Hot tub facility.

(8) Suntan facility.

(9) Racetrack.

(10) Any facility the primary purpose of which is:

(A) retail food and beverage service;

(B) automobile sales or service; or

(C) other retail.

(11) Residential property.

(12) A package liquor store that holds a liquor dealer's permit under IC 7.1-3-10 or any other entity that is required to operate under a license issued under IC 7.1.

Sec. 18. The amount of the credit accruing for a taxable year is equal to the lesser of the following:

(1) Thirty percent (30%) of the depreciable cost of the qualified property placed in service in Indiana in a taxable year.

(2) Six hundred thousand dollars (\$600,000), in total for all qualified property placed in service in Indiana in a taxable year.

Sec. 19. The taxpayer is eligible to:

(1) apply the credit to the taxpayer's tax liability; or

(2) distribute the credit to the taxpayer's members, shareholders, or partners (if the taxpayer is a pass through entity);

over five (5) taxable years beginning with the taxable year in which qualified property is placed in service in Indiana in a trade or business.

Sec. 20. Twenty percent (20%) of the credit amount determined under section 18 of this chapter, excluding any part of the credit



1 carried forward from a prior taxable year, may be applied to the
2 state tax liability of the taxpayer in a taxable year.

3 **Sec. 21.** If the amount of the credit, after applying any part of
4 the credit that is carried forward from a prior taxable year, is
5 greater than the taxpayer's state tax liability for the taxable year,
6 the taxpayer may carry forward the unused part of the credit to
7 not more than ten (10) subsequent taxable years. The amount of
8 the tax credit that is applied to the taxpayer's state tax liability
9 reduces the amount of the credit that may be carried forward to a
10 subsequent taxable year. A taxpayer is not eligible to carry back or
11 obtain a refund of any unused credit.

12 **Sec. 22. (a)** If a pass through entity does not have state tax
13 liability against which the credit may be applied, a shareholder,
14 partner, or member of the pass through entity is entitled to a credit
15 equal to:

16 (1) the credit determined for the pass through entity for the
17 taxable year; multiplied by

18 (2) the percentage of the pass through entity's distributive
19 income to which the shareholder, partner, or member is
20 entitled.

21 (b) The credit provided under subsection (a) is in addition to a
22 credit to which a shareholder, partner, or member of a pass
23 through entity is otherwise entitled under this chapter. However,
24 a pass through entity and a shareholder, partner, or member of the
25 pass through entity may not claim a credit under this chapter for
26 the same qualified property.

27 **Sec. 23.** To receive the credit provided by this chapter, a:

28 (1) taxpayer; or

29 (2) shareholder, partner, or member of a taxpayer that is a
30 pass through entity;

31 must claim the credit on the person or corporation's annual state
32 tax return or returns in the manner prescribed by the department.
33 The person or corporation shall submit to the department all
34 information that the department determines is necessary for the
35 calculation of the credit provided by this chapter and for the
36 determination of whether the person or corporation is eligible for
37 the credit. The department may require a pass through entity to
38 provide all information necessary to determine the amount of the
39 credit to which a shareholder, partner, or member is entitled.

40 **Sec. 24.** For purposes of applying sections 25 through 26 of this
41 chapter, if:

42 (1) the taxpayer places in service in a taxable year qualified

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property with depreciable cost, in total, of more than two million dollars (\$2,000,000); and

(2) section 18 of this chapter limits the total amount of the credit that is available for that taxable year to six hundred thousand dollars (\$600,000);

the credit shall be apportioned among the items of qualified property placed in service in Indiana in that taxable year in the manner prescribed by the department.

Sec. 25. The credit is reduced to zero (0) to the extent that the taxpayer uses:

(1) another credit provided under this article for the same property, an investment in the same property, compensation paid to an employee who uses the same property, or a project that involves the same property; or

(2) an enterprise zone deduction under IC 6-3-2-8 for compensation paid to an employee who uses the same property.

Sec. 26. Except as provided in sections 27 through 29 of this chapter, the credit provided by this chapter is reduced if the taxpayer:

(1) disposes of the qualified property; or

(2) otherwise permanently ceases to use the property as qualified property;

before the end of the useful life of the qualified property.

Sec. 27. A credit is not reduced to the extent that the qualified property ceases to be used in Indiana as a result of a loss arising from fire, storm, other casualty, or theft that would qualify for a casualty loss under Section 165 of the Internal Revenue Code. However, if the property is replaced, the replacement property is not eligible for an additional credit under this chapter.

Sec. 28. A credit is not reduced to the extent that property is:

(1) replaced by other property providing the same or similar function (with or without enhancements); and

(2) the replacement property is used as qualified property for at least the remainder of the useful life of the replaced property.

Sec. 29. (a) A credit is not reduced to the extent that:

(1) the basis of the property for federal income tax purposes, in the hands of the person, corporation, or pass through entity acquiring it or otherwise obtaining control over it, is determined:

(A) in whole or in part by reference to the federal adjusted

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basis of the property in the hands of the person, corporation, or pass through entity from whom it was acquired; or

(B) under Section 1014(e) of the Internal Revenue Code;

(2) the person, corporation, or pass through entity acquiring the property elects, in the manner prescribed by the department, to be treated as the taxpayer for purposes of this chapter; and

(3) the property continues to be used as qualified property for at least the remainder of the useful life of the replaced property, as determined as if the property were in the hands of the original taxpayer that was eligible for the credit.

(b) The electing person, corporation, or pass through entity shall be treated as the taxpayer for purposes of taking any credit under this chapter and paying any recaptured amount under this chapter.

Sec. 30. The reduced credit under section 26 of this chapter is the amount determined under STEP FOUR of the following formula:

STEP ONE: Determine the number of months in the useful life of the qualified property beginning with the month in which the qualified property is placed in service in Indiana in a trade or business.

STEP TWO: Determine the number of months that the property was used as qualified property beginning with the month in which the qualified property is placed in service in Indiana in a trade or business.

STEP THREE: Divide the STEP TWO amount by the STEP ONE amount.

STEP FOUR: Multiple the depreciable cost of the property by the STEP THREE result.

Sec. 31. (a) The difference between:

(1) the total amount of the credit for qualified property that is:

(A) applied to state tax liability; or

(B) distributed to the shareholders, partners, or members of the taxpayer, if the taxpayer is a pass through entity; and

(2) the amount of the reduced credit;

shall be treated as a listed tax due from the taxpayer on the day that the person, corporation, or pass through entity's annual return is due for the taxable year in which the property

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1 permanently ceases to be used as qualified property.

2 (b) However, the amount due from a pass through entity under
3 subsection (a) is reduced to the extent that the pass through entity
4 presents proof to the department that:

5 (1) credits distributed to shareholders, partners, or members
6 have not been applied to any state tax liability; or

7 (2) the shareholders, partners, or members have paid the tax
8 liability due from the pass through entity.

9 (c) If the taxpayer is a pass through entity, each of the
10 shareholders, partners, or members of the pass through entity shall
11 be treated as having a listed tax due for any amount of the tax
12 recapture that is not paid by the pass through entity in proportion
13 to the total credits allocated to the shareholder, partnership, or
14 member in or before the taxable year in which recapture occurs.

15 **Sec. 32. The department may adopt rules under IC 4-22-2 and
16 prescribe forms to implement this chapter.**

17 **SECTION 14. IC 6-3.1-26 IS ADDED TO THE INDIANA CODE
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2003]:**

20 **Chapter 26. Small Business Job Creation Credit**

21 **Sec. 1. As used in this chapter, "credit" refers to a credit
22 provided by this chapter against state tax liability.**

23 **Sec. 2. As used in this chapter, "employee expense" means the
24 sum of the following, attributable to a new employee, that are
25 incurred as out-of-pocket expenses by a taxpayer in a taxable year:**

26 (1) Wages and other compensation, including amounts that
27 constitute deferred compensation paid to a retirement plan
28 that qualifies the employee for a deferral of the federal
29 income taxes due on the amounts paid to the plan.

30 (2) The employer's share of social security taxes.

31 (3) State and federal unemployment taxes and any other
32 employee related premiums or payments required under
33 IC 22.

34 (4) Premiums or other payments made for pension, health
35 care, disability, or death benefits for the employee or other
36 person insured through the employee.

37 **Sec. 3. As used in this chapter, "full-time employee" means an
38 individual who is employed for consideration for at least thirty-five
39 (35) hours each week or who renders any other standard of service
40 generally accepted by custom or specified by contract as full-time
41 employment.**

42 **Sec. 4. As used in this chapter "new employee" means a**

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1 full-time employee first employed by a taxpayer:

- 2 (1) after the department of commerce issues a certification
3 under section 11 of this chapter for the taxpayer; and
4 (2) in the project that is the subject of a credit certification
5 under section 11 of this chapter.

6 (b) The term does not include any of the following:

- 7 (1) An employee of the taxpayer who performs a job that was
8 previously performed by another employee, if that job existed
9 for at least six (6) months before hiring the new employee.
10 (2) An employee of the taxpayer who was previously employed
11 in Indiana by a related member of the taxpayer and whose
12 employment was shifted to the taxpayer after the taxpayer
13 received a certification under section 10 of this chapter.
14 (3) A child, grandchild, parent, or spouse (other than a spouse
15 who is legally separated from the individual) of any individual
16 who:

17 (A) is an employee of the taxpayer (or self-employed as the
18 taxpayer); and

19 (B) has a direct or an indirect ownership interest of at least
20 five percent (5%) in the profits, capital, or value of the
21 taxpayer, as determined in accordance with Section 1563
22 of the Internal Revenue Code and regulations prescribed
23 under Section 1563 of the Internal Revenue Code or would
24 have at least a five percent (5%) if pass through entities
25 were treated as corporations under Section 1563 of the
26 Internal Revenue Code.

27 Sec. 5. As used in this chapter, "pass through entity" means:

28 (1) a corporation that is exempt from the adjusted gross
29 income tax under IC 6-3-2-2.8(2);

30 (2) a:

31 (A) partnership;

32 (B) trust;

33 (C) limited liability company; or

34 (D) limited liability partnership;

35 that is not taxed as a corporation under IC 6-3.

36 Sec. 6. As used in this chapter, "related member" means a
37 person, corporation, or pass through entity that, with respect to the
38 taxpayer during all or any portion of the taxable year, is any one
39 (1) of the following:

40 (1) A shareholder, partner, or member of a taxpayer that has
41 a relationship to the taxpayer described in Section 267(b) of
42 the Internal Revenue Code.

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(2) A member of the family (as determined under Section 267 of the Internal Revenue Code) of a shareholder, partner, or member that directly, indirectly, beneficially, by attribution (as determined under Section 1567 of the Internal Revenue Code), or constructively owns at least fifty percent (50%) of the stock or other equity interest in a taxpayer.

(3) One (1) component member of a controlled group (as defined in Section 267 of the Internal Revenue Code) that includes the taxpayer or would be a component member if pass through entities were treated as corporations under Section 267 of the Internal Revenue Code.

Sec. 7. As used in this chapter, "small business" means a sole proprietorship operated by a person, a corporation, or a pass through entity that:

- (1) is independently owned and operated;
- (2) is not dominant in its field of operation; and
- (3) qualifies as a small business concern under the criteria established in 15 U.S.C. 632 (as effective July 1, 2003) and the definitions and standards established by the administrator of the federal Small Business Administration for a small business concern under 15 U.S.C. 632 (as effective July 1, 2003).

Sec. 8. As used in this chapter, "state tax liability" means tax liability for adjusted gross income tax under IC 6-3.

Sec. 9. As used in this chapter, "taxpayer" refers to a person or corporation that has state tax liability in a taxable year or a pass through entity that is eligible for a credit under this chapter.

Sec. 10. A taxpayer may apply to the department of commerce to certify the taxpayer as a small business employer of at least five (5) new employees in the manner prescribed by the department of commerce. The taxpayer must provide sufficient information for the department of commerce to determine that the taxpayer is likely to qualify for the credit.

Sec. 11. (a) If the department of commerce determines that the applicant taxpayer is likely to qualify for a credit, the department of commerce shall certify that the taxpayer is a small business employer of at least five (5) new employees.

(b) The certification must include the following:

- (1) A detailed description of the project that will result in the employment of new employees.
- (2) A description of the credit that will be allowed for each taxable year under sections 13 and 14 of this chapter.
- (3) A description of the duration of the credit and the first

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taxable year for which the credit may be claimed under section 15 of this chapter.

(4) A description of the specific method for determining the number of new employees employed during a taxable year.

(5) A description of the requirement under section 20 of this chapter that the taxpayer must employ at least the number of new employees specified under subdivision (6) in the project for at least one hundred twenty (120) months beginning with the month specified in the certification.

(6) The minimum number of new employees that must be employed in a project to qualify the taxpayer for a credit, which may not be less than five (5), using data provided by the taxpayer concerning the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce.

(7) The maximum number of new employees for which a credit may be taken under this chapter, which may not exceed fifty (50), using data provided by the taxpayer concerning the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce.

(8) The maximum total credit amount that may be taken under this chapter, using data provided by the taxpayer concerning the likely employee expenses that will be incurred by the taxpayer and the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce.

(c) With the consent of the applicant taxpayer, a certification issued under this section may be amended at any time.

Sec. 12. (a) The department of commerce may not certify a full-time employee position as eligible for a credit if the full-time employee position is in a facility described in IC 6-3.1-25-17.

(b) A credit is not available under this chapter for employee expenses incurred for an individual employed in a facility described in IC 6-3.1-25-17.

Sec. 13. A taxpayer that:

(1) is certified by the department of commerce as a small business employer of at least five (5) new employees;

(2) employees at least five (5) new employees in Indiana; and

(3) qualifies as a small business in the taxable year in which the taxpayer incurs employee expenses for new employees;

is eligible for a credit.

Sec. 14. The amount of the credit in a taxable year is equal to

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thirty percent (30%) of the employee expenses attributable to the lesser of:

- (1) the number of new employee's employed by the taxpayer in each month of the taxable year; or
- (2) the number of new employees specified by the department of commerce in the certification under section 11 of this chapter.

However, the aggregate amount of credits that may be taken in all taxable years may not exceed the amount specified in section 11(b)(8) of this chapter.

Sec. 15. The credit is available for employee expenses in each of the five (5) taxable years beginning with the taxable year immediately following the taxable year in which the taxpayer is certified as a small business employer under section 11 of this chapter.

Sec. 16. If the amount of the tax credit, after applying any part of the credit that is carried forward from a prior taxable year, is greater than the taxpayer's state tax liability for the taxable year, the taxpayer may carry forward the unused part of the credit to not more than ten (10) subsequent taxable years. The amount of the tax credit that is applied to the taxpayer's state tax liability reduces the amount of the credit that may be carried forward to a subsequent taxable year. A taxpayer is not eligible to carry back or obtain a refund of any unused credit.

Sec. 17. (a) If a pass through entity does not have state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder or partner of the pass through entity may not claim a credit under this chapter for the same new employees.

Sec. 18. To receive the credit provided by this chapter, a:

- (1) taxpayer; or
- (2) shareholder, partner, or member of a taxpayer that is a

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pass through entity;
must claim the credit on the individual or entity's annual state tax return or returns in the manner prescribed by the department. The individual or entity shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the individual or entity is eligible for the credit. The department may require a pass through entity to provide sufficient information for the department to determine the amount of the credit to which a shareholder, partner, or member is entitled.

Sec. 19. The credit is reduced to zero (0) to the extent that the taxpayer uses:

- (1) another credit provided under this article for the same project, property used in the same project, an investment in the same project, or compensation paid to an employee who is employed in the same project or who uses property that is part of the same project; or
- (2) an enterprise zone deduction under IC 6-3-2-8 for compensation paid to an employee who is employed in the same project or who uses property that is part of the same project.

Sec. 20. Except as provided in sections 21 through 22 of this chapter, the credit is reduced in any taxable year to the extent that the taxpayer employs in the project fewer than the number of new employees specified by the department of commerce in the certification under section 11 of this chapter during any of the one hundred twenty (120) consecutive months beginning with the month specified in the certification under section 11 of this chapter.

Sec. 21. A credit is not reduced for any month to the extent that the failure to employ at least the number of new employees specified by the department of commerce in the certification under section 11 of this chapter is a temporary reduction in employment that occurs as a result of:

- (1) a labor dispute; or
- (2) a loss arising from fire, storm, other casualty, or theft that would qualify for a casualty loss under Section 165 of the Internal Revenue Code.

Sec. 22. (a) A credit is not reduced to the extent that:

- (1) ownership or control of substantially all of the project is transferred to another person, corporation, or pass through entity;
- (2) the person, corporation, or pass through entity acquiring

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the project elects, in the manner prescribed by the department, to be treated as the taxpayer for purposes of this chapter; and

(3) the project continues to employ the number of new employees specified by the department of commerce in the certification under section 11 of this chapter after it is acquired for the remainder of the period described in section 20 of this chapter.

(b) The electing person, corporation, or pass through entity shall be treated as the taxpayer for purposes of taking any credit under this chapter and paying any recaptured amount under this chapter.

Sec. 23. The reduced credit under section 20 of this chapter is the amount determined under STEP NINE of the following formula:

STEP ONE: Determine the period of time beginning with the month specified by the department of commerce in the certification under section 11 of this chapter through the earlier of:

(A) the last month of the current taxable year; or

(B) the last month that the taxpayer is required under section 20 of this chapter to employ new employees.

STEP TWO: For each month in the period determined under STEP ONE, determine the lesser of:

(A) the number of new employees that the taxpayer employed in the project in the month; or

(B) the number of employees specified as eligible for a credit in the certification under section 11 of this chapter.

STEP THREE: Determine the sum of the amounts determined under STEP TWO.

STEP FOUR: Determine the greater of zero (0) or the number of months remaining after the last month determined under STEP ONE through the last month that the taxpayer is required under section 20 of this chapter to employ new employees.

STEP FIVE: Multiply the STEP FOUR amount by the lesser of:

(A) the number of employees specified as eligible for a credit in the certification under section 11 of this chapter, if the reduction in employment is not a permanent reduction in employment; or

(B) zero (0), if the reduction in employment is a permanent

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- 1 reduction in employment.
- 2 STEP SIX: Add the STEP THREE amount and the STEP
- 3 FIVE amount.
- 4 STEP SEVEN: Multiply one hundred twenty (120) by the
- 5 number of employees specified as eligible for a credit in the
- 6 certification under section 11 of this chapter.
- 7 STEP EIGHT: Divide the STEP SIX result by the STEP
- 8 SEVEN result.
- 9 STEP NINE: Multiply the maximum credit amount specified
- 10 by the department of commerce in the certification under
- 11 section 11 of this chapter by the STEP EIGHT result.
- 12 Sec. 24. (a) The difference between:
- 13 (1) the total amount of the credit for new employee expenses
- 14 that is:
- 15 (A) applied to state tax liability ; or
- 16 (B) distributed to the shareholders, partners, or members
- 17 of the taxpayer, if the taxpayer is a pass through entity;
- 18 and
- 19 (2) the amount of the reduced credit;
- 20 shall be treated as a listed tax due on the day that the person's,
- 21 corporation's, or pass through entity's annual return is due for the
- 22 taxable year in which the taxpayer temporarily fails or
- 23 permanently ceases to employ at least the number of new
- 24 employees specified by the department of commerce in the
- 25 certification under section 11 of this chapter.
- 26 (b) The amount due is reduced by any amount of the credit that
- 27 is recaptured in a prior taxable year.
- 28 (c) The amount due from a pass through entity is reduced to the
- 29 extent that the pass through entity presents proof to the
- 30 department that:
- 31 (1) credits distributed to shareholders, partners, or members
- 32 have not been applied to any state tax liability; or
- 33 (2) the shareholders, partners, or members have paid the tax
- 34 liability due from the pass through entity.
- 35 (d) If the taxpayer is a pass through entity, each of the
- 36 shareholders, partners, or members of the pass through entity shall
- 37 be treated as having a listed tax due for any amount of the tax
- 38 recapture that is not paid by the pass through entity. The amount
- 39 due from a shareholder, partner, or member is the proportionate
- 40 amount of the total credits allocated to the shareholder,
- 41 partnership, or member in or before the taxable year in which
- 42 recapture occurs.

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1 **Sec. 25. The department may adopt rules under IC 4-22-2 and**
 2 **prescribe forms to implement this chapter.**

3 SECTION 15. IC 6-3.1-27 IS ADDED TO THE INDIANA CODE
 4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2003]:

6 **Chapter 27. Technology Commercialization Tax Credit**

7 **Sec. 1. The general assembly makes the following findings:**

8 (1) Indiana is making investments in college and university
 9 research but has an insufficient strategy for commercializing
 10 the resulting technologies.

11 (2) College and university professors often take their research
 12 and leave Indiana to create new companies and new jobs
 13 elsewhere, robbing the college or university of a creative and
 14 valued faculty member and Indiana of the ability to benefit
 15 from homegrown economic development potential.

16 **Sec. 2. This chapter is intended to achieve the following**
 17 **purposes:**

18 (1) To induce companies purchasing the rights to
 19 commercialize technology produced at an Indiana college or
 20 university to locate and grow their businesses in Indiana.

21 (2) To expand the economy of Indiana by enlarging its base of
 22 technology and research based businesses.

23 (3) To enlarge the number of quality jobs available to an
 24 educated workforce to retain the presence of young people
 25 educated in Indiana colleges and universities.

26 (4) To attract to Indiana colleges and universities and retain
 27 the finest research faculty.

28 **Sec. 3 As used in this chapter, "commercialization costs" means:**

29 (1) investment in machinery and equipment; and

30 (2) all expenditures associated with obtaining the rights to use
 31 or the use of technology, including fees related to patents,
 32 copyrights, and licenses.

33 **Sec. 4. As used in this chapter, "machinery and equipment"**
 34 **means machinery or equipment that is:**

35 (1) a capital asset used in a trade or business;

36 (2) subject to depreciation under the Internal Revenue Code;
 37 and

38 (3) placed in service and used in Indiana.

39 **Sec. 5. As used in this chapter, "pass through entity" means:**

40 (1) a corporation that is exempt from the adjusted gross
 41 income tax under IC 6-3-2-2.8(2); or

42 (2) a:

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- (A) partnership;
- (B) trust;
- (C) limited liability company; or
- (D) limited liability partnership;

that is not taxed as a corporation under IC 6-3.

Sec. 6. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity that seeks to or has become qualified to claim a tax credit under this chapter.

Sec. 7. As used in this chapter, "taxpayer applicant" means a taxpayer that qualifies for, applies for, and is awarded technology commercialization tax credits based on an investment in commercialization costs, as required by this chapter.

Sec. 8. As used in this chapter, "taxpayer claimant" means the taxpayer that claims the technology commercialization tax credit in conformity with this chapter against tax liability.

Sec. 9. As used in this chapter, "technology" means:

- (1) the product or intellectual property owned or research sponsored by a regionally accredited college, technical school, or university located in Indiana; or
- (2) any product or intellectual property to which significant development or enhancement occurred at a regionally accredited college, technical school, or university located in Indiana.

Sec. 10. As used in this chapter, "state tax liability" means tax liability for any of the following:

- (1) Adjusted gross income tax (IC 6-3).
- (2) Financial institutions tax (IC 6-5.5).
- (3) Premiums tax (IC 27-1-18-2).

Sec. 11. Qualifying persons, corporations, and pass through entities that invest in the commercialization of Indiana technology in Indiana may earn, apply for, and be granted a tax credit against state tax liability in conformity with this chapter.

Sec. 12. The administration of applications for these credits and the provision of these credits shall be called the technology commercialization tax credit program.

Sec. 13. The technology commercialization tax credit program shall be implemented and administered by the department of commerce. In compliance with IC 4-22-2 and this chapter, the department of commerce shall adopt rules necessary for the efficient and effective administration of this program in keeping with the purposes for which it is enacted.

Sec. 14. In providing for the implementation and administration

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of the program, the department of commerce shall work closely with the department of state revenue.

Sec. 15. The rules must include provisions for the following:

(1) Provisions for the department of commerce to certify:

(A) the eligibility of a taxpayer applicant for receipt of the technology commercialization tax credit provided by this chapter; and

(B) the qualification of a taxpayer claimant to claim the credit against state tax liability.

(2) Provisions for the presentation of a taxpayer's eligibility certification and any other documentation required to apply for and earn a tax credit.

(3) Provisions governing the sale of certified technology commercialization tax credits to other taxpayers.

Sec. 16. To qualify for a technology commercialization tax credit for commercialization costs incurred by the taxpayer in the four (4) taxable years beginning with the first taxable year in which machinery and equipment are placed in service in Indiana, an applicant must meet all of the following qualifications:

(1) The applicant must incur commercialization costs for a trade or business conducted by the taxpayer.

(2) The applicant's commercialization costs must include an investment by purchase or lease of machinery and equipment that:

(A) is placed in and maintained in service in Indiana; and

(B) is used:

(i) in a manner that is directly related to the production of technology; or

(ii) to produce resources essential to the production of technology.

(3) The applicant's commercialization costs must equal at least two hundred fifty thousand dollars (\$250,000) in the first taxable year that machinery and equipment are placed in service in Indiana.

(4) The applicant's commercialization costs must equal at least two million dollars (\$2,000,000) before the end of the fourth taxable year in which the taxpayer is eligible for the technology commercialization tax credit.

Sec. 17. To qualify for a technology commercialization tax credit for four (4) additional taxable years immediately succeeding the first four (4) taxable years provided under section 16 of this chapter, the applicant must invest not less than two hundred fifty

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1 thousand dollars (\$250,000) in each succeeding taxable year in
2 commercialization costs for the production of:

3 (1) technology; or

4 (2) resources essential to the production of technology.

5 Sec. 18. A taxpayer is ineligible for a technology
6 commercialization tax credit for more than eight (8) consecutive
7 taxable years with regard to the same business location.

8 Sec. 19. A technology commercialization tax credit is not
9 available in a taxable year in which machinery and equipment in
10 which an investment is made is not in regular service in Indiana.
11 The interruption of service, as determined under the rules of the
12 department of commerce, does not terminate the eligibility for any
13 further credit under this chapter in any subsequent tax year.

14 Sec. 20. A technology commercialization tax credit is not
15 available in a taxable year for an investment for which any other
16 tax credit based on research and development, as determined
17 under the rules adopted by the department of commerce, is applied
18 to state tax liability.

19 Sec. 21. (a) A taxpayer applicant that:

20 (1) earns, applies for, and is granted a credit under section 16
21 of this chapter; and

22 (2) fails to meet the requirement of making not less than two
23 million dollars (\$2,000,000) in investment in
24 commercialization costs, including machinery and equipment
25 by the end of the third taxable year after the first taxable year
26 in which the machinery and equipment are placed in service;

27 is subject to subsection (b).

28 (b) The taxpayer applicant:

29 (1) must repay to the department of state revenue the amount
30 of all technology commercialization tax credits claimed and
31 credited against state tax liability;

32 (2) forfeits any carry forward of other technology
33 commercialization tax credits earned and retained for future
34 use; and

35 (3) is liable to the state for the price obtained for any
36 technology commercialization tax credits sold.

37 (c) The amount due under this section shall be treated as a
38 liability for a listed tax that is due for the third taxable year after
39 the machinery and equipment are placed in service.

40 Sec. 22. (a) A taxpayer applicant that:

41 (1) earns, applies for, and is granted a credit under section 15
42 of this chapter; and

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1 (2) fails to meet the requirement of not less than two hundred
 2 fifty thousand dollars (\$250,000) of investment by the end of
 3 each taxable year in which a tax credit is granted;
 4 is subject to subsection (b).

5 (b) The taxpayer applicant:

6 (1) is not eligible for any technology commercialization tax
 7 credit in that taxable year;

8 (2) must repay any amounts allowed as a technology
 9 commercialization tax credit for that taxable year; and

10 (3) ceases to qualify for any further technology
 11 commercialization tax credits for investment in that location.

12 (c) The amount due under this section shall be treated as a
 13 liability for a listed tax due for the taxable year in which the
 14 taxpayer fails to make the required investment.

15 Sec. 23. Except as provided in section 24 of this chapter, a
 16 taxpayer applicant that the department of commerce certifies is
 17 eligible for a technology commercialization tax credit is entitled to
 18 a technology commercialization tax credit against state tax
 19 liability. The amount of the credit in any taxable year is equal to
 20 fifteen percent (15%) of the amount of money invested by the
 21 taxpayer applicant in commercialization costs for one (1) business
 22 location.

23 Sec. 24. Whenever a tax credit is claimed against state tax
 24 liability, whether by the taxpayer applicant or by a subsequent
 25 taxpayer claimant, the total of all credits applied in any taxable
 26 year may not exceed fifty percent (50%) of the total of all state tax
 27 liability due by the taxpayer in that taxable year after reduction of
 28 the amount by the sum of all other credits allowed against the tax,
 29 except any tax payments made by or on behalf of the taxpayer.

30 Sec. 25. If the amount of the technology commercialization tax
 31 credit, after applying any part of the credit that is carried forward
 32 from a prior taxable year, is greater than the taxpayer's state tax
 33 liability for the taxable year, the taxpayer claimant may carry
 34 forward the unused part of the credit to not more than twenty-one
 35 (21) subsequent taxable years. The amount of the tax credit that is
 36 applied to the taxpayer claimant's state tax liability reduces the
 37 amount of the credit that may be carried forward to a subsequent
 38 taxable year. A taxpayer claimant is not eligible to carry back or
 39 obtain a refund of any unused credit.

40 Sec. 26. (a) If a pass through entity does not have state tax
 41 liability against which the technology commercialization tax credit
 42 may be applied, a shareholder, partner, or member of the pass

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through entity is entitled to a technology commercialization tax credit equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim a credit under this chapter for the same investment.

Sec. 27. Taxpayer applicants that meet all of the following qualifications, as certified by the department of commerce, may sell all or any unused part of its technology commercialization tax credits to other taxpayers for use in the taxable year in which they are sold or for use in a future taxable year:

- (1) The taxpayer applicant is identified as a business in one (1) of the following business activities:
 - (A) Advanced manufacturing, such as any of the following:
 - (i) Automotive and electronics.
 - (ii) Aerospace technology.
 - (iii) Robotics.
 - (iv) Engineering design technology.
 - (B) Life sciences, such as any of the following:
 - (i) Orthopedics or medical devices.
 - (ii) Biomedical research or development.
 - (iii) Pharmaceutical manufacturing.
 - (iv) Agribusiness.
 - (v) Nanotechnology or molecular manufacturing.
 - (C) Information technology, such as any of the following:
 - (i) Infomatics.
 - (ii) Certified network administration.
 - (iii) Software development.
 - (iv) Fiber optics.
 - (D) 21st century logistics, such as any of the following:
 - (i) High-tech distribution.
 - (ii) Efficient and effective flow and storage of goods, services, or information.
 - (iii) Intermodal ports.
- (2) The taxpayer applicant has not more than two hundred

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1 twenty-five (225) employees in the taxable years that the tax
2 credits are earned and the taxable years that the tax credits
3 are sold.

4 **(3) Not less than seventy-five percent (75%) of all employees**
5 **at the business location where the tax credits are earned are**
6 **Indiana residents.**

7 **Sec. 28. In selling technology commercialization tax credits**
8 **granted to them, the taxpayer applicants shall sell them for not less**
9 **than seventy-five percent (75%) of the value of the technology**
10 **commercialization tax credits.**

11 **Sec. 29. The purchaser of unused credits shall apply the credits**
12 **in the same manner and against the same taxes as the taxpayer**
13 **applicant.**

14 **Sec. 30. To receive the credit provided by this chapter, a**
15 **taxpayer claimant must claim the credit on the person's or**
16 **corporation's annual state tax return or returns in the manner**
17 **prescribed by the department of state revenue. The person or**
18 **corporation shall submit to the department of state revenue all**
19 **information that the department of state revenue determines is**
20 **necessary for the calculation of the credit provided by this chapter**
21 **and for the determination of whether the person or corporation is**
22 **eligible for the credit. The department of state revenue may**
23 **require a pass through entity to provide all information necessary**
24 **to determine the amount of the credit to which a shareholder,**
25 **partner, or member is entitled.**

26 SECTION 16. IC 8-10-0.3 IS ADDED TO THE INDIANA CODE
27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2003]:

29 **Chapter 0.3. General Provisions; Definitions**

30 **Sec. 1. The exercise by the commission of a power granted by**
31 **law for an authorized purpose shall be treated as constituting the**
32 **performance of an essential governmental function of the state.**
33 **However, the commission is not immune from liability resulting**
34 **from the exercise of any of these powers.**

35 **Sec. 2. This article, being necessary for the welfare of the state**
36 **and its inhabitants, shall be liberally construed to effect the**
37 **authorized purposes of the commission.**

38 **Sec. 3. The definitions in this chapter apply throughout this**
39 **article.**

40 **Sec. 4. "Authorized purpose" means the following:**

41 **(1) The:**

42 **(A) planning and design;**

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(B) construction;

(C) operation; or

(D) maintenance;

of a project.

(2) An action that is necessary or desirable, as determined by the commission, to carry out a purpose described in subdivision (1).

Sec. 5. "Bonds" means bonds, notes, or other forms or evidences of obligation issued in temporary or definitive form, including notes issued in anticipation of the issuance of bonds and renewal notes.

Sec. 6. "Commission" refers to the Indiana port commission established by IC 8-10-0.5-1.

Sec. 7. "Commission facility" means real property or personal property, or any combination of real and personal property, that:

(1) is:

(A) owned, leased, or otherwise controlled; or

(B) financed;

by the commission; and

(2) is related to, useful for, or in furtherance of one (1) or more authorized purposes.

Sec. 8. "Commissioner" refers to a member of the commission appointed under IC 8-10-0.5-3.

Sec. 9. "Construction" includes alteration, construction, creation, development, enlargement, improvement, installation, reconstruction, remodeling, and renovation.

Sec. 10. "Cost", as applied to a commission facility, means any combination of the following:

(1) The cost of acquisition or construction of the facility and the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for that acquisition or construction.

(2) The cost of demolishing or removing any buildings or structures on land acquired under subdivision (1), including the cost of acquiring any lands to which those buildings or structures may be moved.

(3) The cost of acquiring or constructing and equipping a principal office of the commission.

(4) The cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements for the access roads.

(5) The cost of public utility and common carrier relocation



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or duplication.

(6) The cost of all machinery, furnishings, and equipment.

(7) Financing charges.

(8) Interest before and during construction and for not more than eighteen (18) months after the completion of construction.

(9) Engineering.

(10) Expenses of research and development with respect to commission facilities.

(11) Legal expenses.

(12) Plans, specifications, surveys, studies, and estimates of cost and revenues.

(13) Other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing the facility.

(14) Administrative expenses.

(15) Any other expenses necessary or incident to:

(A) acquiring or constructing the facility;

(B) financing the acquisition or construction of the facility;
or

(C) financing the placing of the facility into operation;
including the amount authorized in the resolution of the commission providing for the issuance of bonds to be paid into any special funds from the proceeds of the bonds.

Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, the preparation of plans and specifications, and other engineering services, or any other cost described in this section that is incurred in connection with the acquisition or construction of a facility may be regarded as part of the cost of the facility and may be reimbursed out of the proceeds of bonds issued by the commission.

Sec. 11. As used in this chapter, "person" refers to any of the following:

(1) An individual.

(2) A legal entity other than an individual, including a firm, a partnership, a corporation, or a governmental entity.

(3) Any combination of individuals and legal entities.

Sec. 12. "Political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 13. (a) "Port", except as provided in subsection (b), includes any place or places on Lake Michigan, the Ohio River, the Wabash River, or another body of water, natural or artificial, in which

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1 waterborne vessels capable of carrying articles of commerce over
 2 navigable bodies of water may be loaded, unloaded or
 3 accommodated.

4 (b) For the purposes of IC 8-10-5, the term has the meaning set
 5 forth in IC 8-10-5-1.

6 Sec. 14. (a) "Port project", except as provided in subsections (b)
 7 and (c), includes any facilities, adjuncts, and appurtenances
 8 necessary to operate a modern port, including the dredging of
 9 approaches thereto, and including, among other things, but not
 10 limited to, breakwaters, inner harbors, outer harbors, channels,
 11 canals, turning basins, docks, wharves, piers, quays, slips, loading,
 12 unloading, handling and storage equipment, warehouses,
 13 refrigerating plants and equipment, elevators for the handling and
 14 storage of grain, coal, and other bulk commodities, terminal
 15 buildings or facilities, railroad equipment and trackage, roadways,
 16 airplane landing fields, parking lots, garages, automotive
 17 equipment, tugs, ferries, maintenance and construction vessels,
 18 communication systems, sewers, drains, works for the treatment of
 19 sewage, garbage, and wastes, and the furnishing of utility service
 20 necessary to serve the property under the jurisdiction or control of
 21 the commission, and other buildings and facilities that the
 22 commission considers necessary for the operation of the port.

23 (b) For purposes of IC 8-10-2, the term means any property or
 24 services described in subsection (a) and any facilities, adjuncts, and
 25 appurtenances described in IC 8-10-2-2.

26 (c) For purposes of IC 8-10-3, the term means any property or
 27 services described in subsection (a) and any facilities, adjuncts, and
 28 appurtenances described in IC 8-10-3-1.

29 Sec. 15. "Project" refers to any of the following:

30 (1) A port project.

31 (2) Any commission facility related to nonmaritime port and
 32 traffic exchange points throughout Indiana for the transfer of
 33 goods and passengers between any modes of transportation.

34 (3) Any other commission facility or project, whether located
 35 at a port or elsewhere in Indiana, that:

36 (A) is authorized by law; or

37 (B) the commission finds will enhance, foster, aid, provide,
 38 or promote:

39 (i) economic development;

40 (ii) private-public partnerships;

41 (iii) industrial, commercial, business, transportation,
 42 recreational, cultural, or governmental purposes; or

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(iv) other uses, activities, and purposes approved by the commission.

SECTION 17. IC 8-10-0.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 0.5. Indiana Port Commission; Organization; Tax Exempt Status

Sec. 1. There is established a commission to be known as the Indiana port commission.

Sec. 2. The commission is a body both corporate and politic in the state of Indiana.

Sec. 3. The commission consists of seven (7) members, appointed by the governor, not more than four (4) of whom may be members of the same political party.

Sec. 4. The members of the commission shall be residents of Indiana and shall have been qualified electors in Indiana for a period of at least five (5) years next preceding their appointment.

Sec. 5. Each member of the commission shall be appointed for a term of four (4) years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term.

Sec. 6. A member of the commission shall be eligible for reappointment.

Sec. 7. The governor may at any time remove any member of the commission for misfeasance, nonfeasance, or malfeasance in office.

Sec. 8. The members of the commission shall, within ten (10) days after their appointment, meet and qualify by subscribing an oath to discharge honestly and faithfully the duties of their office as members of the commission.

Sec. 9. The commission shall elect one (1) of the members as chairman and another as vice chairman.

Sec. 10. The commission shall appoint a secretary-treasurer who need not be a member of the commission.

Sec. 11. Four (4) members of the commission constitute a quorum.

Sec. 12. The affirmative vote of four (4) members is necessary for any official action taken by the commission.

Sec. 13. No vacancy in the membership of the commission impairs the rights of a quorum to exercise all the rights and perform all the duties of the commission.

Sec. 14. (a) Before the issuance of any bonds:

(1) each appointed member of the commission shall give a

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surety bond to the state in the penal sum of twenty-five thousand dollars (\$25,000); and

(2) the secretary-treasurer shall give a surety bond to the state in the penal sum of fifty thousand dollars (\$50,000).

(b) Each surety bond must be:

(1) conditioned upon the faithful performance of the duties of the office;

(2) executed by a surety company authorized to transact business in Indiana as surety; and

(3) approved by the governor and filed in the office of the secretary of state.

Sec. 15. Each appointed member of the commission shall receive an annual salary of seven thousand five hundred dollars (\$7,500), payable in monthly installments.

Sec. 16. Each member shall be reimbursed for the member's actual expenses necessarily incurred in the performance of the member's duties.

Sec. 17. The commission shall not be required to pay any taxes or assessments upon:

(1) any project of the commission;

(2) any property acquired or used by the commission for an authorized purpose; or

(3) any income from a project or property of the commission accruing to the commission from an exercise of a power related to an authorized purpose.

Sec. 18. Subject to IC 8-10-1-27, the exemptions described in section 17 of this chapter do not apply to the ad valorem property taxation of property occupied and used during a taxable year by a person or an entity who is a lessee of the property as of the tax lien date for that taxable year under a written lease with a remaining term longer than one (1) year.

SECTION 18. IC 8-10-0.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 0.6. General Powers

Sec. 1. The commission is granted all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes, powers, and duties. The power granted to the commission by this section includes, but is not limited to, the powers described in this chapter.

Sec. 2. To the extent that this chapter grants powers to the commission that the commission did not have before July 1, 2003,



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the commission may not exercise a power granted under this chapter in a manner that impairs rights accruing under a:

- (1) bond issued; or
- (2) contract entered into;

before July 1, 2003.

Sec. 3. If another law requires that a power:

- (1) relating to a port or port project; and
- (2) granted both by this chapter and the other law;

be exercised in a particular manner, the power shall be exercised in conformity with the requirements of the other law.

Sec. 4. The commission may adopt bylaws, rules under IC 4-22-2, and policies for the regulation of its affairs and the conduct of its business.

Sec. 5. The commission may adopt an official seal, which may not be the seal of the state of Indiana.

Sec. 6. The commission may sue and be sued and plead and be impleaded in its own name. However, actions at law against the commission shall be brought in the circuit court of the county in which the principal office of the commission is located or in the circuit court of the county in which the cause of action arose, if the county is located within the state. All summonses and legal notices of every kind shall be served on the commission by leaving a copy thereof at the principal office of the commission with the person in charge thereof or with the secretary of the commission. However, the action is not considered commenced until a copy of the summons and complaint, cross-complaint, petition, bill, or pleading is served upon the attorney general of Indiana.

Sec. 7. The commission may maintain one (1) or more offices at a place or places within Indiana as it may designate.

Sec. 8. The commission may:

- (1) employ or contract for an executive director or a manager, consulting engineers, superintendents, other engineers, construction and accounting experts, attorneys (with the approval of the attorney general), and other employees and agents as may be necessary in its judgment; and
- (2) fix their compensation.

The compensation of an employee of the commission may not exceed the compensation of the highest paid officer or employee of the state.

Sec. 9. (a) The commission may acquire, hold, use, and dispose of its income, revenues, funds, and money.

(b) The commission may invest funds not needed for immediate

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1 disbursement.

2 **Sec. 10.** The commission may acquire, rent, lease, hold, use, and
3 dispose of property, including easements and rights-of-way, for its
4 authorized purposes. Any determinations made by the commission
5 under this section shall be conclusive. A disposition of property
6 may be made without advertising and the receipt of bids.

7 **Sec. 11. (a)** The commission may acquire by appropriation,
8 under the provisions of the eminent domain law of the state, any
9 real property, including lands under water and riparian rights,
10 property, rights, rights-of-way, franchises, easements, or other
11 property necessary or proper for the construction or the efficient
12 operation of any project or port.

13 **(b)** The commission may exercise the powers of eminent domain
14 that are conferred upon the commission by an act of Congress of
15 the United States.

16 **(c)** Title to the condemned property shall be taken in the name
17 of the state of Indiana.

18 **(d)** This section does not authorize the commission to take or
19 disturb property or facilities constituting all or part of a public
20 port operating on June 30, 2003.

21 **(e)** This section does not authorize the commission to take or
22 disturb property or facilities belonging to a public utility or to a
23 common carrier engaged in interstate commerce, which property
24 or facilities are required for the proper and convenient operation
25 of the public utility or common carrier, unless provision is made
26 for the restoration, relocation, or duplication of the property or
27 facilities elsewhere at the sole cost of the commission, except in
28 cases in which the equipment or facilities are located within the
29 limits of existing highways or public thoroughfares.

30 **Sec. 12.** The commission may plan for, construct, maintain,
31 repair, police, and operate a project.

32 **Sec. 13.** The commission may establish rules and policies for the
33 use of a project and other property subject to the jurisdiction and
34 control of the commission.

35 **Sec. 14.** The commission may fix, revise, and collect fees, rentals,
36 tolls, and other charges for the use of a project and other property
37 subject to the jurisdiction and control of the commission. A charge
38 may not be less than the charges established for the same services
39 furnished by a public utility or common carrier in the jurisdiction
40 of the commission.

41 **Sec. 15.** The commission may make and execute contracts and
42 all other instruments necessary or convenient for the performance

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1 of its authorized purposes.

2 **Sec. 16.** The commission may procure insurance against any loss
3 in connection with its property and other assets, including loans
4 and loan notes in amounts and from insurers as it may consider
5 advisable.

6 **Sec. 17.** The commission may procure insurance to guarantee,
7 insure, coinsure, and reinsure against political and commercial risk
8 of loss, and any other insurance the commission considers
9 necessary, including insurance to secure the payment of principal
10 and interest on notes or other obligations of the commission.

11 **Sec. 18.** The commission may promote, advertise, and publicize
12 commission facilities and its authorized purposes.

13 **Sec. 19.** The commission may provide information to persons
14 with an interest in transportation and other commission activities.

15 **Sec. 20.** The commission may appear before ratemaking or
16 legislative authorities to represent and promote the interests of the
17 commission and its authorized purposes.

18 **Sec. 21.** The commission may do any of the following, in regard
19 to any interests in any real or personal property, or any
20 combination of real and personal property, including, without
21 limitation, machinery, equipment, plants, factories, offices, and
22 other structures and facilities related to, useful for, or in
23 furtherance of any authorized purpose, for the consideration and
24 in the manner as the commissioners may determine:

25 (1) Loan money to any person for the acquisition,
26 construction, furnishing, and equipping of the property.

27 (2) Guarantee the obligations of any person or governmental
28 entity.

29 (3) Accept and hold as consideration for the conveyance of
30 property or any interest in the property or interests therein as
31 the commissioners may determine, notwithstanding any
32 restrictions that may otherwise apply to the investment of
33 funds.

34 **Sec. 22. (a)** This section does not apply to either of the following:

35 (1) Any contract secured by or to be paid from money raised
36 by taxation or the proceeds of obligations secured by a pledge
37 of money raised by taxation.

38 (2) Any contract secured exclusively by or to be paid
39 exclusively from the general revenues of the commission. For
40 the purposes of this section, any revenues derived by the
41 commission under a lease or other agreement that, by its
42 terms, contemplates the use of amounts payable under the

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agreement either to pay the costs of the improvement that is the subject of the contract or to secure obligations of the commission issued to finance costs of the improvement, are excluded from general revenues and need not be deposited into the general fund.

(b) Notwithstanding any other law, including any requirement for:

- (1) notice;
- (2) competitive bidding or selection; or
- (3) the provision of security;

any purchase, exchange, sale, lease, lease with an option to purchase, conveyance of other interests in, or other contract with a person or governmental entity that pertains to the acquisition, construction, maintenance, repair, furnishing, equipping, or operation of any real or personal property, or any combination thereof, related to, useful for, or in furtherance of or in connection with an authorized purpose is to be made in the manner and subject to the terms and conditions determined by the commissioners' discretion.

SECTION 19. IC 8-10-0.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 0.7. Indiana Port Commission; General Duties

Sec. 1. (a) The commission shall:

- (1) adopt:
 - (A) rules under IC 4-22-2; or
 - (B) a policy;
 - establishing a code of ethics for its employees; or
- (2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor.

Sec. 2. (a) The commission shall cause an audit of its books and accounts to be made at least once each year by certified public accountants, and the cost of the audit may be treated as a part of the cost of construction or of operations of the projects of the commission according to an apportionment formula established by the commission.

(b) The accounts, books, and records of the commission shall be audited annually by the state board of accounts, and the cost of the audit may be treated as a part of the cost of construction or of operations of the projects of the commission according to an

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1 apportionment formula established by the commission.

2 **Sec. 3.** All final actions of the commission shall be journalized,
3 and the journal shall be open to the inspection of the public at all
4 reasonable times.

5 **Sec. 4.** Unless the commission publicly declares an emergency,
6 it may not during any six (6) month period make separate
7 contracts with another party for similar construction projects or
8 the purchase of similar equipment, materials, or supplies under
9 IC 8-10-1-7(5) without advertising for and accepting public bids,
10 if the total cost of the separate contracts is more than twenty-five
11 thousand dollars (\$25,000).

12 **Sec. 5. (a)** Unless the commission publicly declares an
13 emergency, when the cost of any contract for construction, or for
14 the purchase of equipment, materials, or supplies, involves an
15 expenditure of more than twenty-five thousand dollars (\$25,000),
16 the commission shall make a written contract with the lowest and
17 best bidder after advertisement for not less than two (2)
18 consecutive weeks in a newspaper of general circulation in Marion
19 County, Indiana, and in other publications as the commission
20 determines.

21 (b) The notice shall state the general character of the work and
22 the general character of the materials to be furnished, the place
23 where plans and specifications therefor may be examined, and the
24 time and place of receiving bids.

25 (c) Each bid shall contain the full name of each person or
26 company interested in it and shall be accompanied by a sufficient
27 bond or certified check on a solvent bank that if the bid is accepted
28 a contract will be entered into and the performance of its proposal
29 secured.

30 (d) The commission may reject any and all bids.

31 (e) A bond with good and sufficient surety, as shall be approved
32 by the commission, shall be required of all contractors in an
33 amount equal to at least fifty percent (50%) of the contract price
34 conditioned upon the faithful performance of the contract.

35 **Sec. 6.** The commission shall foster and encourage
36 public-private partnerships and the participation of private
37 enterprise in the development of commission facilities and in
38 engaging in authorized purposes to the fullest extent it considers
39 practicable in the interest of limiting the necessity of construction
40 and operation of those facilities by the commission.

41 SECTION 20. IC 8-10-0.8 IS ADDED TO THE INDIANA CODE
42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2003]:

Chapter 0.8. General Bonding Powers; Tax Exemption

Sec. 1. This chapter applies to the financing of a project of the commission.

Sec. 2. To the extent that this chapter grants powers to the commission that the commission did not have before July 1, 2003, the commission may not exercise a power granted under this chapter in a manner that impairs rights accruing under a bond issued or contract entered into before July 1, 2003.

Sec. 3. If another law requires that a power:

(1) relating to a port or port project; and

(2) granted both by this chapter and the other law;

be exercised in a particular manner, the power shall be exercised in conformity with the requirements of the other law.

Sec. 4. The commission may enter into loans in anticipation of receiving any revenues due to the commission or proceeds from a bond issued by the commission.

Sec. 5. The commission may issue bonds or notes for the acquisition, construction, furnishing, or equipping of real or personal property, or any combination of real and personal property, related to, useful for, or in furtherance of any authorized purpose. The net indebtedness incurred by the commission may not exceed the total value of all property, land, buildings, equipment, or other facilities owned by the commission.

Sec. 6. The commission, by resolution of its commissioners, may issue revenue bonds beyond the limit of bonded indebtedness provided by law for the acquisition, construction, furnishing, or equipping of real or personal property, or any combination of real and personal property, related to, useful for, or in furtherance of any authorized purpose, including all costs in connection with or incidental to an authorized purpose.

Sec. 7. Revenue bonds issued under this chapter are subject to the conditions specified in sections 8 through 12 of this chapter.

Sec. 8. The revenue bonds shall be secured only by a pledge of and a lien on the revenues of the commission derived from those loan payments, rentals, fees, charges, or other revenues that are designated in the resolution, including, but not limited to, any property to be acquired, constructed, furnished, or equipped with the proceeds of the bond issue, after provision only for the reasonable cost of operating, maintaining, and repairing the property of the commission so designated. The bonds may further be secured by the covenant of the commission to maintain rates or

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1 charges that will produce revenues sufficient to meet the costs of
 2 operating, maintaining, and repairing property and to meet the
 3 interest and principal requirements of the bonds and to establish
 4 and maintain reserves for the foregoing purposes or to ensure the
 5 same. The commissioners, by resolution, may provide for the
 6 periodic issuance of additional revenue bonds, to be secured
 7 equally and ratably, without preference, priority, or distinction,
 8 with outstanding revenue bonds, subject to the terms and
 9 limitations of any trust agreement described in this section, and of
 10 any resolution authorizing bonds then outstanding. The
 11 commissioners, by resolution, may designate additional property
 12 of the commission, the revenues of which shall be pledged and be
 13 subject to a lien for the payment of the debt charges on revenue
 14 bonds theretofore authorized by resolution of the commission's
 15 commissioners, to the same extent as the revenues described in this
 16 section.

17 **Sec. 9.** In the discretion of the commissioners, the revenue bonds
 18 of the commission may be secured by a trust agreement between
 19 the commission's commissioners on behalf of the commission and
 20 a corporate trustee, which may be any trust company or bank
 21 having powers of a trust company, within or outside Indiana. The
 22 trust agreement may provide for the pledge or assignment of the
 23 revenues to be received but may not pledge the general credit of
 24 the commission. A trust agreement securing revenue bonds issued
 25 to acquire, construct, furnish, or equip real property, plants,
 26 factories, offices, and other structures and facilities for authorized
 27 purposes consistent with this chapter may mortgage the real or
 28 personal property, or a combination thereof, to be acquired,
 29 constructed, furnished, or equipped from the proceeds of those
 30 revenue bonds as further security for the bonds. The trust
 31 agreement or the resolution providing for the issuance of revenue
 32 bonds may set forth the rights and remedies of the bondholders
 33 and trustee and may contain other provisions for protecting and
 34 enforcing the bondholders' rights and remedies that are
 35 determined in the discretion of the commission's commissioners to
 36 be reasonable and proper. The agreement or resolution may
 37 provide for the use, deposit, reinvestment, custody, investment, and
 38 disbursement of all money derived from the sale of the bonds to
 39 accomplish authorized purposes of the commission.

40 **Sec. 10.** All bonds issued under authority of this chapter,
 41 regardless of form or terms and regardless of any other law to the
 42 contrary, have all qualities and incidents of negotiable instruments,



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1 subject to provisions for registration, and may be issued in coupon,
 2 fully registered, or other form, or any combination thereof, as the
 3 commission's commissioners determine. Provision may be made
 4 for the registration of any coupon bonds as to principal alone or as
 5 to both principal and interest, and for the conversion into coupon
 6 bonds of any fully registered bonds or bonds registered as to both
 7 principal and interest.

8 **Sec. 11. The revenue bonds must bear interest at the rate or**
 9 **rates, must bear the date or dates, and must mature within forty**
 10 **(40) years following the date of issuance and in the amount, at the**
 11 **time or times, and in the number of installments as may be**
 12 **provided in or under the resolution authorizing their issuance. Any**
 13 **original issue of revenue bonds must mature not later than forty**
 14 **(40) years from its date of issue. The resolution also must provide**
 15 **for the execution of the bonds, which may be by facsimile**
 16 **signatures unless prohibited by the resolution, and the manner of**
 17 **sale of the bonds. The resolution must provide for, or provide for**
 18 **the determination of, any other terms and conditions relative to the**
 19 **issuance, sale, and retirement of the bonds that the commissioners**
 20 **in their discretion determine to be reasonable and proper.**

21 **Sec. 12. Whenever the commission considers it expedient, it may**
 22 **issue renewal notes and refund any bonds, whether the bonds to be**
 23 **refunded have or have not matured. The final maturity of any**
 24 **notes, including any renewal notes, shall be not later than five (5)**
 25 **years from the date of issue of the original issue of notes. The final**
 26 **maturity of any refunding bonds shall be not later than the later of**
 27 **forty (40) years from the date of issue of the original issue of bonds**
 28 **or the date by which it is expected, at the time of issuance of the**
 29 **refunding bonds, that the useful life of all of the property, other**
 30 **than interests in land, refinanced with proceeds of the bonds, will**
 31 **have expired. The refunding bonds shall be sold and the proceeds**
 32 **applied to the purchase, redemption, or payment of the bonds to be**
 33 **refunded and the costs of issuance of the refunding bonds.**

34 **Sec. 13. Bonds of the commission:**

35 **(1) are lawful investments of:**

36 **(A) banks and trust companies with approval of the**
 37 **superintendent of banks;**

38 **(B) savings and loan associations;**

39 **(C) the bond retirement funds or the sinking funds of**
 40 **municipal corporations, boards of education, port**
 41 **authorities, and counties;**

42 **(D) the administrator of workers' compensation;**



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(E) the board of trustees of the Indiana state teachers' retirement fund;

(F) the board of trustees of the public employees' retirement fund; and

(G) domestic life insurance companies and domestic insurance companies; and

(2) shall be acceptable as security for the deposit of public money as provided in IC 5-13-9-3.4.

Sec. 14. The:

(1) bonds issued by the commission;

(2) interest thereon;

(3) proceeds received by a holder from the sale of the bonds to the extent of the holder's cost of acquisition or proceeds received upon redemption before maturity or proceeds received at maturity; and

(4) receipt of the interest and proceeds;

are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

SECTION 21. IC 8-10-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. In order to:

(1) promote the agricultural, industrial and commercial development of the state; and

(2) to provide for the general welfare by the construction and operation, in cooperation with the federal government, or otherwise, of a modern port on **any combination of:**

(A) Lake Michigan; ~~and/or~~

(B) the Ohio River; ~~and/or~~ the Wabash River; **or**

(C) **another location approved by the governor;**

with terminal facilities, to accommodate water, rail, truck and air-borne transportation;

the Indiana Port Commission is hereby authorized and empowered to construct, maintain, and operate, in cooperation with the federal government, or otherwise, at such ~~location~~ **locations** on Lake Michigan, ~~and/or~~ the Ohio River, ~~and/or~~ the Wabash River, **or another location, all** as shall be approved by the governor, public ports with terminal facilities and traffic exchange points for all forms of transportation, giving particular attention to the benefits which may accrue to the state and its citizens from the St. Lawrence Seaway and **other navigable waterways. To accomplish these purposes the commission may** issue port revenue bonds of the state payable solely from revenues, to pay the cost of such projects.

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SECTION 22. IC 8-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "commission" shall mean the Indiana Port Commission created by section 3 of this chapter, or, if said commission shall be abolished, the board, body or commission succeeding to the principal functions thereof, or to whom the powers given by this chapter to the commission shall be given by law:

(b) The word "port" shall include any place or places on Lake Michigan, the Ohio River, and the Wabash River, natural or artificial in which water-borne vessels capable of carrying articles of commerce over navigable bodies of water may be loaded, unloaded or accommodated:

(c) The words "port project" shall include any facilities, adjuncts and appurtenances necessary to operate a modern port, including the dredging of approaches thereto, and including, among other things, but not limited to breakwaters, inner harbors, outer harbors, channels, canals, turning basins, docks, wharves, piers, quays, slips, loading, unloading, handling and storage equipment, warehouses, refrigerating plants and equipment, elevators for the handling and storage of grain, coal and other bulk commodities, terminal buildings or facilities, railroad equipment and trackage, roadways, airplane landing fields, parking lots, garages, automotive equipment, tugs, ferries, maintenance and construction vessels, communication systems, sewers, drains, works for the treatment of sewage, garbage and wastes, and the furnishing of utility service necessary to serve the property under the jurisdiction or control of the commission, and other buildings and facilities which the commission may deem necessary for the operation of the port:

(d) The word "cost" as applied to a port or port project shall embrace the cost of construction, the cost of acquisition of all land, rights-of-way, property, rights, easements and interests, including lands under water and riparian rights acquired by the commission for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of relocating public roads, land or easements therefor, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for not exceeding two (2) years after the estimated date of completion of construction, cost of engineering and



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1 legal expenses, plans, specifications, surveys, estimates of cost, traffic
 2 and revenues, other expenses necessary or incident to determining the
 3 feasibility or practicability of constructing any such project;
 4 administrative expense; and such other expenses as may be necessary
 5 or incident to the construction of the project; the financing of such
 6 construction and the placing of the project in operation:

7 (e) (1) The word "owner" shall include all individuals,
 8 copartnerships, associations or corporations having any title or
 9 interest in any property, rights, easements and other interests
 10 authorized to be acquired by this chapter.

11 (f) (2) The word "revenues" shall mean all fees, tolls, rentals,
 12 gifts, grants, moneys and all other funds coming into the
 13 possession or under the control of the commission by virtue of the
 14 terms and provisions of this chapter, but shall not include real
 15 property or personal property other than money, nor the proceeds
 16 from the sale of bonds issued under provisions of this chapter.

17 (g) The word "public roads" shall include all public highways,
 18 roads, and streets in the state, whether maintained by the state, county,
 19 city, township or other political subdivision.

20 SECTION 23. IC 8-10-1-3 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. There is hereby
 22 created a commission to be known as the "Indiana port commission"
 23 and by that name the commission may sue and be sued; and plead and
 24 be impleaded. The commission hereby created is a body both corporate
 25 and politic in the state of Indiana; and the exercise by the commission
 26 of the powers conferred by this chapter in the construction, operation
 27 and maintenance of a port project shall be deemed and held to be
 28 essential governmental functions of the state; but the commission shall
 29 not however be immune from liability by reason thereof. The
 30 commission shall consist of seven (7) members; appointed by the
 31 governor; no more than four (4) of whom shall be members of the same
 32 political party. The members shall be residents of the state; and shall
 33 have been qualified electors therein for a period of at least five (5)
 34 years next preceding their appointment. The members of the
 35 commission first appointed shall continue in office for terms expiring;
 36 in the case of two (2) members, on July 1, 1962; and in the case of
 37 three (3) members, on July 1, 1963, July 1, 1964, and July 1, 1965 and
 38 the first two (2) members appointed after January 1, 1975; shall
 39 continue in office for terms expiring July 1, 1977 for one (1) member
 40 and July 1, 1979 for the other member, respectively; and until their
 41 respective successors shall be duly appointed and qualified. The term
 42 of any member of the commission first appointed shall be designated



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by the governor. The successor of each such member shall be appointed for a term of four (4) years; except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term; and a member of the commission shall be eligible for reappointment. The governor may at any time remove any member of the commission for misfeasance, nonfeasance, or malfeasance in office. The members of the commission shall, within ten (10) days after their appointment, meet and qualify by subscribing an oath to discharge honestly and faithfully the duties of their office as members of such commission. The commission shall thereafter elect one (1) of the members as chairman and another as vice-chairman; and shall appoint a secretary-treasurer who need not be a member of the commission. Four (4) members of the commission shall constitute a quorum and the affirmative vote of four (4) members shall be necessary for any official action taken by the commission. No vacancy in the membership of the commission shall impair the rights of a quorum to exercise all the rights and perform all the duties of the commission. (a) Before the issuance of any port revenue bonds under the provisions of this chapter, each appointed member of the commission shall give a surety bond to the state in the penal sum of twenty-five thousand dollars (\$25,000) and the secretary-treasurer shall give a surety bond to the state in the penal sum of fifty thousand dollars (\$50,000) each such surety bond to be conditioned upon the faithful performance of the duties of the office, to be executed by a surety company authorized to transact business in the state as surety and to be approved by the governor and filed in the office of the secretary of state. Each appointed member of the commission shall receive an annual salary of seven thousand, five hundred dollars (\$7,500); payable in monthly instalments. However, no members of such commission as appointed hereunder shall receive any salary except a per diem as fixed and approved by the budget director until said commission is able to carry on the full operations as intended by this chapter; and the budget director, subject to the approval of the governor of the state of Indiana, shall determine when said salaries for said commission members shall commence. The governor shall, however, appoint said members as herein provided within a period of sixty (60) days following the effective date of this chapter. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties.

(b) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the commission hereunder beyond the extent to which moneys shall have

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1 been provided under the authority of this chapter.

2 SECTION 24. IC 8-10-1-7 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. The commission is
4 authorized and empowered:

5 ~~(1) to adopt bylaws for the regulation of its affairs and the conduct~~
6 ~~of its business;~~

7 ~~(2) to adopt an official seal which shall not be the seal of the state~~
8 ~~of Indiana;~~

9 ~~(3) to maintain a principal office and sub-offices at such place or~~
10 ~~places within the state as it may designate;~~

11 ~~(4) to sue and be sued; and to plead and be impleaded in its own~~
12 ~~name. However, actions at law against the commission shall be~~
13 ~~brought in the circuit court of the county in which the principal~~
14 ~~office of the commission is located or in the circuit court of the~~
15 ~~county in which the cause of action arose; if the county is located~~
16 ~~within the state. All summonses and legal notices of every kind~~
17 ~~shall be served on the commission by leaving a copy thereof at the~~
18 ~~principal office of the commission with the person in charge~~
19 ~~thereof or with the secretary of the commission. However, no such~~
20 ~~action shall be deemed commenced until a copy of the summons~~
21 ~~and complaint, cross complaint, petition, bill, or pleading is~~
22 ~~served upon the attorney general of Indiana;~~

23 ~~(5) (1) to acquire, lease, construct, maintain, repair, police, and~~
24 ~~operate a port or port project as provided in this chapter, and to~~
25 ~~establish rules and regulations for the use of such port or port~~
26 ~~project, and other property subject to the jurisdiction and control~~
27 ~~of the commission;~~

28 ~~(6) (2) to issue port revenue bonds of the state, payable solely~~
29 ~~from revenues, as herein provided, for the purpose of paying all~~
30 ~~or any part of the cost of a port or port project;~~

31 ~~(7) (3) to acquire, lease, and operate tug boats, locomotives, and~~
32 ~~any and every kind of motive power and conveyances or~~
33 ~~appliances necessary or proper to carry passengers, goods, wares,~~
34 ~~merchandise, or articles of commerce in, on, or around the port or~~
35 ~~port project;~~

36 ~~(8) to fix and revise from time to time and to collect fees, rentals,~~
37 ~~tolls, and other charges for the use of any port or port project;~~

38 ~~(9) to acquire, obtain option on, hold, and dispose of real and~~
39 ~~personal property in the exercise of its powers and the~~
40 ~~performance of its duties under this chapter;~~

41 ~~(10) (4) to designate the location and establish, limit, and control~~
42 ~~points of ingress to and egress from the port property;~~

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1 ~~(11)~~ (5) to lease to others for development or operation such
 2 portions of any port or port project, on such terms and conditions
 3 as the commission shall deem advisable; **and**
 4 ~~(12)~~ to make and enter into all contracts, undertakings, and
 5 agreements necessary or incidental to the performance of its
 6 duties and the execution of its powers under this chapter. When
 7 the cost of any such contract for construction, or for the purchase
 8 of equipment, materials, or supplies, involves an expenditure of
 9 more than twenty-five thousand dollars (\$25,000), the
 10 commission shall make a written contract with the lowest and best
 11 bidder after advertisement for not less than two (2) consecutive
 12 weeks in a newspaper of general circulation in Marion County,
 13 Indiana, and in such other publications as the commission shall
 14 determine. The notice shall state the general character of the work
 15 and the general character of the materials to be furnished; the
 16 place where plans and specifications therefor may be examined;
 17 and the time and place of receiving bids. Each bid shall contain
 18 the full name of every person or company interested in it and shall
 19 be accompanied by a sufficient bond or certified check on a
 20 solvent bank that if the bid is accepted a contract will be entered
 21 into and the performance of its proposal secured. The commission
 22 may reject any and all bids. A bond with good and sufficient
 23 surety as shall be approved by the commission, shall be required
 24 of all contractors in an amount equal to at least fifty percent
 25 (50%) of the contract price conditioned upon the faithful
 26 performance of the contract;
 27 ~~(13)~~ to employ an executive director or manager, consulting
 28 engineers, superintendents, and such other engineers, construction
 29 and accounting experts, attorneys, and other employees and
 30 agents as may be necessary in its judgment; and to fix their
 31 compensation; but no compensation of any employee of the
 32 commission shall exceed the compensation of the highest paid
 33 officer or employee of the state. However, the employment of an
 34 attorney shall be subject to such approval of the attorney general
 35 as may be required by law;
 36 ~~(14)~~ (6) to receive and accept from any federal agency grants for
 37 or in aid of the construction of any port or port project, and to
 38 receive and accept aid or contributions from any source of either
 39 money, property, labor, or other things of value, to be held, used,
 40 and applied only for the purposes for which such grants and
 41 contributions may be made.
 42 ~~(15)~~ to provide coverage for its employees under the provisions



1 of IC 22-3-2 through IC 22-3-6, and IC 22-4;
 2 (16) to do all acts and things necessary or proper to carry out the
 3 powers expressly granted in this chapter; and
 4 (17) to hold, use, administer, and expend such sum or sums as
 5 may herein or hereafter be appropriated or transferred to the
 6 commission.

7 SECTION 25. IC 8-10-1-9 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The commission
 9 shall have power to adopt such by-laws, rules and regulations as it may
 10 deem advisable for the control and regulation of any port or port project
 11 or traffic on any port or port project, for the protection of and
 12 preservation of property under its jurisdiction and control, and for the
 13 maintenance and preservation of good order within the property under
 14 its control, and such by-laws, rules and regulations shall be published
 15 in a newspaper of general circulation in Marion County, Indiana, and
 16 in such other manner as the commission shall prescribe; however, such
 17 rules and regulations shall provide that public officers shall be afforded
 18 ready access, while in performance of their official duty, to all property
 19 under the jurisdiction or control of the commission without the
 20 payment of tolls.

21 (b) Such rules and regulations adopted under this section shall be
 22 adopted under IC 4-22-2.

23 (c) ~~A person who violates a rule or regulation of the commission~~
 24 ~~commits a Class C infraction.~~

25 SECTION 26. IC 8-10-1-17 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. The commission
 27 shall be authorized to fix, review, **revise**, charge and collect fees, tolls,
 28 rentals and other charges for the use of the port, port project, terminal
 29 facilities and lands under the jurisdiction or control of the commission
 30 or services rendered by the commission, and the aggregate thereof shall
 31 provide revenues at least sufficient to pay the cost of operation,
 32 maintenance and repair of the port and terminal facilities, including the
 33 administration expenses of the commission, and in case revenue bonds
 34 are issued, sufficient to pay the interest on and principal of the bonds
 35 in accordance with their terms, and also sufficient to establish and
 36 maintain reserves created for all such purposes and for depreciation
 37 purposes. The fixing and collection of such fees, tolls, rentals and other
 38 charges and the expenditure of the revenues derived therefrom shall not
 39 be subject to the supervision or regulation by any other officer,
 40 commission, board, bureau or agency of the state. After such bonds
 41 have been fully paid and discharged and all obligations under any trust
 42 agreement securing the same have been performed or satisfied, any

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1 remaining surplus net revenues and all surplus net revenues thereafter
 2 derived from the operation of such port shall be paid into the state
 3 general fund.

4 SECTION 27. IC 8-10-1-27 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) The exercise of
 6 the powers granted by this chapter will be in all respects for the benefit
 7 of the people of the state, for the increase of their commerce and
 8 prosperity, and for the improvement of their health and living
 9 conditions.

10 (b) As the operation, and maintenance of a port project by the
 11 commission will constitute the performance of essential governmental
 12 functions: The commission shall not be required to pay any taxes or
 13 assessments upon any port project or any property acquired or used by
 14 the commission under the provisions of this chapter or upon the income
 15 therefrom. The bonds issued by the commission; the interest thereon;
 16 the proceeds received by a holder from the sale of such bonds to the
 17 extent of the holder's cost of acquisition; or proceeds received upon
 18 redemption prior to maturity or proceeds received at maturity; and the
 19 receipt of such interest and proceeds shall be exempt from taxation in
 20 the state of Indiana for all purposes except the financial institutions tax
 21 imposed under IC 6-5.5 or a state inheritance tax imposed under
 22 IC 6-4.1.

23 (c) (b) Notwithstanding any other statute, a lessee's leasehold estate
 24 in land that is part of a port and that is owned by the state or the
 25 commission is exempt from property taxation.

26 SECTION 28. IC 8-10-4.5 IS ADDED TO THE INDIANA CODE
 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2003]:

29 **Chapter 4.5. Political Subdivisions; Conveyances; Contracts**

30 **Sec. 1. All counties, cities, towns, townships and other political**
 31 **subdivisions and all public agencies and commissions of the state,**
 32 **notwithstanding any contrary provision of law, are authorized and**
 33 **empowered to lease, lend, grant, exchange, or convey property to**
 34 **the commission at its request.**

35 **Sec. 2. A lease, loan, grant, or conveyance under section 1 of this**
 36 **chapter may be upon the terms and conditions that the proper**
 37 **authorities of the counties, cities, towns, townships, other political**
 38 **subdivisions or public agencies and commissions of the state**
 39 **consider reasonable and fair.**

40 **Sec. 3. A lease, loan, grant, or conveyance under section 1 of this**
 41 **chapter may be accomplished without the necessity for an**
 42 **advertisement, order of court, or other action or formality, other**



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than the regular and formal action of the authorities concerned, any real property owned by any such municipality or governmental subdivision that may be necessary or convenient to carry out the authorized purposes of the commission.

Sec. 4. The commission may enter into an agreement with one (1) or more contracting political subdivisions under which:

(1) the commission is authorized or obligated to:

(A) exercise any power;

(B) perform any function; or

(C) render any service;

on behalf of the contracting political subdivision that the contracting political subdivision is authorized to exercise, perform, or render; or

(2) any contracting political subdivision is authorized or obligated to:

(A) exercise any power;

(B) perform any function; or

(C) render any service;

on behalf of the commission that the commission is authorized to exercise, perform, or render.

Sec. 5. Upon the execution of an agreement under section 4 of this chapter, and within the limitations prescribed by the agreement:

(1) the commission:

(A) may exercise the same powers, perform the same functions, and render the same services as the contracting political subdivision is authorized to exercise, perform, or render; and

(B) has all powers necessary or incidental to exercising those powers, performing those functions, or rendering those services in the same manner as the contracting political subdivision may exercise, perform, or render them directly; and

(2) the contracting political subdivision:

(A) may exercise the same powers, perform the same functions, and render the same services as the commission is authorized to exercise, perform, or render; and

(B) has all powers necessary or incidental to exercising those powers, performing those functions, or rendering those services in the same manner as the commission may exercise, perform, or render them directly.

Sec. 6. The exercise of powers, the performance of functions, or

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the rendering of services under section 5 of this chapter by the commission is governed by any procedures applicable to the contracting political subdivision on behalf of which the powers are exercised, the functions are performed, or the services are rendered. The exercise of powers, the performance of functions, or the rendering of services under section 5 of this chapter by any contracting political subdivision is governed by any procedures applicable to the commission on behalf of which the powers are exercised, the functions are performed, or the services are rendered.

Sec. 7. An agreement under section 4 of this chapter authorizing the commission to exercise powers, perform functions, or render services of a contracting political subdivision does not alter the authority of the contracting political subdivision to exercise those powers, perform those functions, or render those services. An agreement under section 4 of this chapter authorizing a contracting political subdivision to exercise powers, perform functions, or render services of the commission does not alter the authority of the commission to exercise those powers, perform those functions, or render those services.

Sec. 8. A contracting entity or political subdivision that does not possess the power to:

(1) levy or exempt taxes; or

(2) exercise eminent domain;

before entering into an agreement under section 4 of this chapter does not acquire either of those powers by virtue of entering into an agreement under section 4 of this chapter.

SECTION 29. IC 8-10-4.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 4.7. Penalties

Sec. 1. A person who violates a rule of the commission commits a Class C infraction.

Sec. 2. (a) This section does not apply to contracts for purchases of property, real or personal, between the commission and other departments, municipalities, or subdivisions of state government.

(b) A member, an agent, or an employee of the commission who knowingly is interested in any contract with the commission, or in the sale of any property, either real or personal, to the commission, commits a Class A misdemeanor.

(c) All contracts described in subsection (b) are void.

Sec. 3. A commission member who knowingly violates

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1 IC 8-10-0.7-4 commits a Class D felony.

2 Sec. 4. A person who accepts a contract with the commission
3 knowing that IC 8-10-0.7-4 was violated in connection with the
4 contract commits a Class D felony and may not be a party to or
5 benefit from any contract with a public body in Indiana for two (2)
6 years from the date of the person's conviction.

7 SECTION 30. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 JULY 1, 2003]: IC 8-10-1-7.1; IC 8-10-1-11; IC 8-10-1-22;
9 IC 8-10-1-23; IC 8-10-1-24; IC 8-10-1-26; IC 8-10-1-29.

10 SECTION 31. [EFFECTIVE JULY 1, 2003] (a) Any member of
11 the Indiana port commission that:

12 (1) is serving as a member on June 30, 2003; and

13 (2) would have an unexpired term to serve on the commission
14 if IC 8-10-1-3 had not been amended by this act;

15 continues to be a member of the commission to the same extent as
16 if IC 8-10-1-3 had not been amended. However, the member is
17 subject to removal by the governor under IC 8-10-0.5-7, as added
18 by this act.

19 (b) The reorganization of the general powers of the Indiana port
20 commission in IC 8-10-0.6 and the general duties of the Indiana
21 port commission in IC 8-10-0.7 shall be literally construed to
22 continue the powers and duties that the commission had before
23 July 1, 2003.

24 (c) Any rule, obligation, or other action taken by the Indiana
25 port commission before July 1, 2003, shall be treated as a rule,
26 obligation, or other action of the Indiana port commission after
27 June 30, 2003, to the same extent as if this act had not been
28 enacted.

29 SECTION 32. [EFFECTIVE JULY 1, 2003] (a) Notwithstanding
30 IC 6-3.1-25-11, as added by this act, property acquired before July
31 1, 2003, or placed in service before January 1, 2004, is not eligible
32 for a credit under IC 6-3.1-25-11, as added by this act.

33 (b) Notwithstanding IC 6-3.1-26-13, as added by this act,
34 employee expenses incurred before December 31, 2003, are not
35 eligible for a credit under IC 6-3.1-26-13, as added by this act.

36 (c) IC 6-3.1-27, as added by this act, applies only to taxable
37 years beginning after December 31, 2003.

38 (d) The department of state revenue shall adopt temporary rules
39 in the manner provided for the adoption of emergency rules under
40 IC 4-22-2-37.1 to implement IC 6-2.5-5-39 (gross retail exemption
41 for certain research and development equipment), as added by this
42 act. In adopting rules under this SECTION, the department of

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1 state revenue shall provide for the uniform interpretation of the
 2 terms biotechnology, advanced manufacturing, information
 3 technology, and twenty-first century logistics under IC 6-2.5-5-39,
 4 as added by this act, and IC 6-3.1-27 (businesses eligible for a
 5 technology commercialization tax credit), as added by this act. A
 6 rule adopted under this SECTION expires on the earliest of the
 7 following:

8 (1) The date another rule is adopted under this SECTION to
 9 supersede a previous rule adopted under this SECTION.

10 (2) The date that a permanent rule is adopted under IC 4-22-2
 11 to supersede a rule adopted under this SECTION.

12 (3) December 31, 2004.

13 SECTION 33. [EFFECTIVE JULY 1, 2003] (a) The department
 14 of state revenue may adopt rules in the manner provided for the
 15 adoption of emergency rules under IC 4-22-2-37.1 to carry out its
 16 responsibilities under IC 4-4-31, as added by this act. A rule
 17 adopted under this SECTION expires on the latest of the following:

18 (1) The date specified by the department of state revenue in a
 19 rule.

20 (2) The date the department of state revenue adopts a
 21 temporary or permanent rule to replace another rule adopted
 22 under this SECTION.

23 (3) July 1, 2005.

24 (b) This SECTION expires July 2, 2005.

25 SECTION 34. [EFFECTIVE JULY 1, 2003] For purposes of
 26 IC 6-2.5-5-39, as added by this act, all transactions shall be
 27 considered as having occurred after June 30, 2003, to the extent
 28 that delivery of the property or services constituting selling at
 29 retail is made after that date to the purchaser or to the place of
 30 delivery designated by the purchaser. However, a transaction shall
 31 be considered as having occurred before July 1, 2003, to the extent
 32 that the agreement of the parties to the transaction was entered
 33 into before July 1, 2003, and payment for the property or services
 34 furnished in the transaction is made before July 1, 2003,
 35 notwithstanding the delivery of the property or services after June
 36 30, 2003.

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